Supreme Court of the United States.

No. 533.—October Term, 1905.

George W. Felts, Appellant,
vs.
E. J. Murphy, Warden of the Illinois State Penitentiary at Joliet.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

[March 12, 1906.]

The appellant was indicted in the Circuit Court of Winnebago County, in the State of Illinois, for the crime of murder. He was tried at the January term of that court, held in 1905, found guilty, and sentenced to the penitentiary for his natural life. He made an application to the Circuit Court of Cook County for a writ of *habeas corpus*, after judgment upon the verdict had been entered, and that court denied the writ. He then made a like application to the Supreme Court of the State of Illinois, which was denied. The appellant says that he was unable to obtain a writ of error in the State court, because, as he avers, it would cost between $700 and $800 to print the record, and that he was absolutely penniless, except that he had a pension of some $24 a month. Hence he was unable to obtain any relief in the State courts.

Subsequently the appellant applied by written petition to the United States Circuit Court for the Northern District of Illinois, Eastern Division, for the same writ, to be directed to the warden of the Illinois State Penitentiary, where the petitioner was confined under the judgment entered upon the verdict of guilty upon the trial of the indictment. The appellant alleged in his petition the foregoing facts, and also, among other things, that he was not guilty of the crime of which he was indicted and had been convicted. He further stated and described the circumstances in which the killing was done, and said that he had been set upon on a dark night by some one unknown to him, who came upon him from behind and grasped him by the neck and almost broke it as he ran him about in the dark; that his neck was very badly hurt in the struggle and marks were left upon it visible for days thereafter. In the struggle the person was killed and the petitioner was subsequently convicted of his murder. The petitioner is a veteran of the Civil War and lost his hearing in the line of his duty as a soldier, and is now between 60 and 70 years of age. He is so deaf that he can only hear when a person speaks into the mouthpiece of his ear trumpet close to his ear.

He alleged in his petition that upon the trial of the case he did not hear one single word of the examination of the jurors, either by the State's attorney or by his own counsel; that he did not hear the names of the jurors nor their business, and could not confer intelligently with his counsel as to the advisability of acceptance or rejection of a juror, and, as a matter of fact, he was not consulted and did not know the facts elicited by the examination of the jurors before acceptance; that if he had known the facts as they occurred he would have counselled the rejection of certain jurors on account of their relationship to other people; that he did not hear or have communicated to him, in any way, the evidence of the witnesses on the trial of his case, and that he was unable to suggest to his counsel any questions for their examination or cross-examination during the trial, and that the substance of their evidence was not communicated to him, and he did not know what it was until he saw some partial reports of it in the newspapers, when it was too late to suggest to his counsel proper cross-questions; that the first thing communicated to him after the beginning of the trial, which lasted about two weeks, was the verdict; he was in the court room, with his ear trumpet, but was unable to hear the verdict, and did not know what the verdict was until the clerk of the court wrote it upon a piece of paper and gave it to him.

He was present in the court room during the motion for a new trial, but did not hear a word that was said by either counsel, and the only thing communicated to him was when he was called to the bar to be sentenced.

The record shows that after the motion for a new trial had been made, the court said, "on reviewing the entire case I am disposed to say that the motion for a new trial be overruled." Continuing, the court said:

"It is regretted in one sense that the defendant, on account of his infirmity, is unable to know clearly what has been done. He should be informed, I suppose, of the fact that his motion for a new trial has been overruled. Mr. Sheriff, will you bring Mr. Felts forward? I wish you would say to Mr. Felts that his motion for a new trial has been overruled.

"The SHERIFF: The court wishes me to tell you that motion for a new trial is overruled. Do you understand?

"FELTS: I understand; yes.

"The COURT: You may ask him if he has anything to say why sentence of the court should not now be pronounced.

"The SHERIFF: Have you anything to say why sentence of the court should not now be pronounced?

"FELTS: False swearing is all I got to say.

"COURT: Well, under the circumstances of course it is practically impossible for me to say anything to this defendant.

"(Here follows the sentence of the court), which sentence was transmitted to the defendant by the sheriff through a tube."

The record shows that the appellant was himself examined as a witness on his trial and had the benefit of counsel, who appeared for and defended him upon such trial.

He contended before the Federal Circuit Court, on his application for the writ of *habeas corpus*, that, on account of the manner in which he was tried, his constitutional rights had been denied him, and that his conviction was without due process of law within the meaning of the Fourteenth Amendment to the Constitution of the United States, and that he was entitled, therefore, to be discharged from imprisonment under the judgment. He also urged that the same was void, as being rendered without jurisdiction on account of the violation of his constitutional rights. The Circuit Court denied the application for the writ, and from the order denying the same the appellant has appealed to this court.

Mr. Justice PECKHAM, after making the foregoing statement, delivered the opinion of the Court.

The uncontradicted facts are that this unfortunate man has been convicted of the crime of murder and sentenced to imprisonment for life, although he did not hear a word of the evidence that was given upon his trial, because of his almost total deafness, his inability to hear being such that it required a person to speak through his ear trumpet, close to his ear, in order that such person should be heard by him.

Counsel for the appellant has cited in his brief cases regarding the mode of procedure which has been sometimes adopted where, from the condition of mind of the individual to be tried, it was doubtful if he were able to understand or comprehend the proceedings of the trial, and it may well be that such a method might properly have been adopted in this case. But upon this writ the question for our determination is simply one of jurisdiction. If that were not lacking at the time of the trial and if it continued all through, then the application for the writ was properly denied by the Circuit Court, and its order must be affirmed. The writ cannot perform the function of a writ of error. (*Ex parte Bigelow*, 113 U. S. 328; *In re Lennon*, 166 U. S. 548, 552; *In re Eckart*, 166 U. S. 481.)

In this case the State court had jurisdiction both of the subject matter and of the person upon the trial of the accused, and such jurisdiction was not lost during his trial but continued to its end, and it had jurisdiction to direct the judgment which was entered and to have the same executed. If there were any irregularities in the trial of the appellant, because of the failure of the court to see to it that the testimony in the case was repeated to him through the ear trumpet which he had with him, it was at most an error, which did not take away from the court its jurisdiction over the subject matter and over the person of the accused. The appellant was not deprived of his liberty without due process of law by the manner in which he was tried, so as to violate the provisions of the Fourteenth Amendment to the Federal Constitution. That amendment, it has been said by this

court, "did not radically change the whole theory of the relations of the State and Federal Governments to each other and of both governments to the people." (*In re Kemmler*, 136 U. S. 436, 448; *Brown* v. *New Jersey*, 175 U. S. 172, 175.)

We are unable to see how jurisdiction was lost in this case by the manner of trial. The accused was *compos mentis*. No claim to the contrary is made. He knew he was being tried, on account of the killing of the deceased. He had counsel and understood the fact that he was on trial on the indictment mentioned, but he did not hear the evidence. He made no objection, asked for nothing, and permitted his counsel to take his own course. We see no loss of jurisdiction in all this and no absence of due process of law. It is to be regretted that the testimony was not read or repeated to him. But that omission did not affect the jurisdiction of the court.

Upon the point that the failure to have repeated to the appellant the testimony given on the trial caused the court to lose jurisdiction, the case of *Nielson, Petitioner*, (131 U. S. 176,) is cited by appellant. We think it plain that the case does not substantiate the contention. The sentence imposed in that case was held by this court to have been beyond the jurisdiction of the trial court to pronounce, because it was against the express provisions of the Constitution, which bounds and limits all jurisdiction; but we are entirely clear that in this case the trial was so conducted that there was not at any time any lack of jurisdiction in the court, and that the most that can be urged is that there might have been an error committed by the trial court in omitting to have the evidence repeated to the appellant as it was given by the witnesses at the trial, even though no demand of the kind was made by petitioner or his counsel.

Although the conviction and punishment of the appellant under the facts appearing on this record may seem to be somewhat hard, yet this court has no jurisdiction to grant the relief asked for.

The order of the Circuit Court refusing the writ was right, and is

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.